The Province of Alberta

IN THE MATTER OF "THE NATURAL GAS UTILITIES ACT"

—and—

IN THE MATTER OF an Enquiry into Scheme to be adopted for Gathering, Processing and Transmission of Natural Gas in Turner Valley

G. M. BLACKSTOCK, Esq., K.C., *Chairman*

Dr. E. H. BOOMER, F.C.I.C., *Commissioner*

Session:

CALGARY, Alberta May 20, 1947.

VOLUME 2.

CONSOLIDATED MINING & SMELTING CO. LTD. APPLICATION.

10 A.M.Session.
May 20th, 1947.

THE CHAIRMAN: Now, Gentleman, the Board has considered the argument presented to it yesterday. At the moment what I am going to say is only intended to convey in a general way the Board's decision on the present application. The Board has come to the conclusion that it has no jurisdiction to re-hear its decision of 24th March, 1947. It has the right to review that decision but considers that it can only do so on the evidence now before it, and not on new evidence which the Applicant proposes to adduce. The Company's application for leave to amend its Notice of Motion is refused. The application amounts to this - that if the Board decides it has no jurisdiction to hear the original application, that it should permit the hearing of an application whereby Madison should be directed to sell gas directly to Consolidated. Any such application should be subject of a new Notice of Motion, served upon all parties who might be affected thereby.

The present application is, therefore, dismissed with costs to all parties as directed by the Board's formal reasons for its decision, which will be delivered as early as possible this afternoon. It has been dictated and it is in the hands of the Court Reporters now and you will have it early this afternoon.

MR AUXIER: Mr.Chairman, could I have an adjournment for say ten minutes to consider whether we shall proceed on the basis of the evidence that is before you?

THE CHAIRMAN: I will hear you, Mr. Auxier, but I considered that also at something around two o'clock this morning. Looking at your submission, the only difference

between your present submission and the evidence given by Mr. Colls arises because of differences in the arithmetic due to the rate base fixed by the Board, the rate of return, cost allocations and different well head prices. Now I will hear you, Mr. Auxier, but I must be frank and say well you might change my mind.

MR. AUXIER: What I was thinking of was this, most of our argument is directed to the position of the producer, the amount of repressuring to be required if we were not on the line. That is all before you. That is one part of our motion. The other part deals with the position, the relation of our load factor and peak demand as compared with the rest, and the position of the services rendered between the well head and the point of delivery into the lines of Canadian Western. Those are really the only two points which we make. We do use figures in our submission which are not before you because they are 1946 figures, but I believe that all of the figures necessary with respect to the previous years are before you. There is obviously no substantial difference.

THECHAIRMAN : They are just matters of law?

MR. AUXIER: They are just matters of law, and I think all of the principles can be put before you on the evidence that is now before you. The only new point really that is raised in the submission is the position of the alternate, possible substitute for the service by way of altering its source of supply from Home.

THE CHAIRMAN: I deal with that briefly, Mr. Auxier, in my decision. Can Home, in view of the terms of the Statute, enter into an exclusive contract with your Company?

MR.AUXIER: Possibly they cannot. That would likely have to be made the subject matter of another application. The only reason I put that in here is to show the maximum limits of the price which could be charged to this consumer. It seems to be a well-recognized practice that the cost of obtaining service in some other way more or less sets the maximum price which can be charged for the service, and I put it in simply for that purpose, to show what gas would cost us, giving the producer the same return that he is now getting.

THE CHAIRMAN: Then you must assume that the Minister of Public Works will give you or Home a permit to duplicate facilities that already exist?

MR. AUXIER: Well, of course, whether the facilities already exist in the same degree is questionable, but we would have to get over all those hurdles. I am quite aware of that fact but I did want to bring that in issue, what it would cost us, assuming all those hurdles were cleared, just what it would cost us to lay down gas at our plant.

THE CHAIRMAN: That is introducing new evidence?

MR AUXIER: That is introducing new evidence, yes.

THE CHAIRMAN: Well I have said I do not think I have any power to hear new evidence.

MR.AUXIER: Well if I could have an adjournment for say ten minutes, Mr.Chairman.

THE CHAIRMAN: Certainly.

MR. STEER: Does that involve, Sir, that the Board considers that it has the jurisdiction to grant the

TO: [illegible]

FROM: [illegible]

SUBJECT: [illegible]

DATE: [illegible]

[illegible]

[illegible]

[

application on the material before the Board?

THE CHAIRMAN: That I can review my decision on the material now before the Board, on the evidence now before the Board.

MR.STEER: Exactly, but do you deal with the question, may I ask respectfully, as to whether as a matter of law on a review you have the right to fix prices, two different prices, to Canadian Western, depending on the use that is ultimately going to be made of the gas?

THE CHAIRMAN: I deal with that and point out the impossible situation that would arise if I attempted to do any such a thing.

MR. AUXIER: Well, do you deal, Sir, with the question as to whether or not you have jurisdiction to do that under 72(c)?

THE CHAIRMAN: What I say is that I have the power to review my decision based upon the evidence given at the Hearing and on nothing else.

MR.AUXIER: Yes, but that takes care of the one point that was argued by my friend, Mr. Steer.

THE CHAIRMAN: And I say that I have no jurisdiction to fix two prices at the gate.

MR.AUXIER: Well if that is the case, if that is your judgment, Sir, there would appear to be no point in arguing on the evidence already before you if you feel you have no jurisdiction, except to have a uniform gate price.

THE CHAIRMAN: I think that Section 72 is conclusive against any jurisdiction to fix varied prices, varied wholesale prices, to one public utility. Possibly there might be a case where another utility under different circumstances,-

I cannot imagine any - but it might be that I might order at some future time Madison to sell gas to another public utility on a basis different from that which I have ordered them to sell to Canadian Western. I cannot imagine any.

MR.AUXIER: If you feel you have no jurisdiction to grant the order even though you have jurisdiction to hear the application, there is no particular point in me proceeding.

THE CHAIRMAN: And you shall have the decision this afternoon so that you can hasten to the Appeal Court, and I will be quite frank with you, I hope you do. If I am wrong I want to know it.

MR. AUXIER: Well, if that is the case, Sir, then could we at this time, everyone is before you, could we make any even tentative plans with respect to the Public Utility hearing?

THE CHAIRMAN: I will hear that any time you are ready. We have to think of Mr.Steer.

MR.AUXIER: That is what I was thinking of, Mr. Steer and Mr. Chamber's position.

THE CHAIRMAN: And I suggested to him yesterday, Mr.Auxier, and I think he agrees with me, that since there will be substantial delay caused by these two gentlemen going to London, that if I should decide that your client is entitled to be put in a different schedule from that one they are now in, that any order I make should be retroactive. I do not think I have the power under the Statute to make it retroactive, but I think that they should agree that any Order made, if made, should be retroactive.

MR.STEER: I would have to get instructions on

that, Sir. It might quite well be that someone other than I could appear on the application.

THE CHAIRMAN: That is so.

MR. AUXIER: Well, Mr. Chambers might want to appear.

MR. STEER: I would want to appear, of course.

THE CHAIRMAN: You can get instructions quite soon cannot you?

MR. STEER: Oh yes.

THE CHAIRMAN: What I am afraid of, Mr. Auxier, is that your application may resolve itself into a general rate hearing.

MR. STEER: Mr. Brownie tells me that he thinks there is no practical problem in the way of a retroactive Order. Under those circumstances, we will agree.

MR. AUXIER: On that basis there is no particular hurry and I am glad to accommodate you, Mr. Steer, in any way possible. There was one further matter and I might as well make my position clear now. I will have to consider, of course, first whether I want an appeal from your decision. If I do not, or do and do not succeed, then on the application before the Public Utility Board I will ask that consideration be given to the various characteristics of our load, not only so far as the lines of the Canadian Western are concerned, but all the way back to the wells, and to arrive in that way, to attempt to arrive in that way at what rate could be charged us for gas.

THE CHAIRMAN: You want to do indirectly what you cannot do directly?

M. AUXIER: Yes, I will argue that. I think the only way that full credit can be given to our position is

by considering that. After all, it is all one gas supply system.

THE CHAIRMAN: Well, Mr. Auxier, I can relieve your mind in this way, that when I hear any application that I think I have the power to hear, it is most unusual thing for me to put any restriction on Counsel as to how they should conduct their case and what evidence they wish to produce.

MR. AUXIER: I just want to make my position clear in that respect. It would seem to be pointless in view of the fact that this long inquiry has just been completed, that there is all this mass of evidence, all the parties concerned were represented, and I would ask leave to refer on the application before the Public Utilities Board to the evidence taken before the Natural Gas Utilities Board. Now, I understand from the Public Utilities Act you have the widest powers as to what evidence you shall hear and not hear, you are not limited by the ordinary legal rules of evidence, and as a matter of fact in this Inquiry there was lots of evidence admitted that would not be strict legal proof in a Court of law.

THE CHAIRMAN: I think I said several times that we broke every rule of evidence that I know of.

MR. AUXIER: And it is the only way you can get at the facts.

THE CHAIRMAN: And I only succeeded in throwing the fragments out the window.

MR.AUXIER: I would ask, Sir, will ask that I be allowed to refer to the evidence taken before the Natural Gas Utilities Board in the application before the Public Utilities Board.

THE CHAIRMAN: Well I would not want to commit myself at the moment on that, Mr.Auxier, excepting that my general principle is to place as few as possible restrictions on Counsel as to how they shall conduct their case and the evidence they shall lead.

MR. FENERTY: In connection with the suggestion that any decision arrived at should be retroactive, I think my friend, Mr. Steer, should know that the time arrives for an inquiry under the Public Utilities Act, and the City may have some affirmative representations or perhaps independent motions of their own dealing with the matter, which seems to me would necessarily perhaps result in a general inquiry.

THE CHAIRMAN: That is what I have been afraid of, Mr. Fenerty.

MR. FENERTY: I would not want a situation to arise that a decision based on any matters of interest to the Consolidated would be retroactive and others would not be. We might just as well face the situation that we are arriving at a general inquiry.

MR. STEER: My agreement is withdrawn at once, Sir.

MR. FENERTY: I thought I should tell my learned friend that now so that he would not be led into.....

MR. STEER: If we are going to be precipitated into a general rate inquiry, it is not going to be on the basis of any agreement as to retroactive features.

MR. FENERTY: There are certain matters we are going to bring up, involved in the inquiry before the Utility Board, and whether it will precipitate a general inquiry I do not know.

MR. STEER: I would think that the Company and the City ought to be able to get together.

MR. FENERTY: I would think they ought to be able to get together. I remember on one occasion my friend, Mr. McDonald, told me he expected the A.P.A. would have something to say about these matters.

THE CHAIRMAN: Why do these things always happen to me?

MR. HARRISON: In connection with Mr. Auxier's last remarks, and in attempting to arrive at a decision as to what part we will take, if any, in the hearing before the Public Utilities Commission, I understand that in the present application he did not propose interfering with those parts of your decsion of March 24th which dealt with such things as rate of return and rate bases and so on, but I understand from his remarks today that he is retracting or changing that attitude and will attempt, in order to justify a special price for his plant, to perhaps attack those parts of your decision. Now, I just want to be quite clear on that so that we may determine whether we should take part in this particular thing or not.

THE CHAIRMAN: The only way you can attack the decision is by taking it to appeal and the time for appeal has gone.

MR. AUXIER: I think my friend Mr. Harrison misunderstood me. I would take no different position there than I take here, that is, that the 9 cent rate is making up the total amount of money required by Madison. I have no quarrel with that. It is the matter of the allocation of that 9 cents amongst the various people using gas.

MR. STEER: You suggest that you should not be charged with any repressuring costs or some other items of that sort?

MR. AUXIER: A little more than that, that our big demand as compared with that of the City warrants a demand charge for all services rendered by it up to the gate smaller than that of the other consumers, consequently the 9 cent rate should be reduced accordingly. Sofar as whether it might have to be offset by an increase to somebody else, I have made that position clear throughout. With regard to the well head price, I proposedto submit here, and I will submit whenever I get before a tribunal that will hear me, that there should be some consideration given to the fact that our load is out of line, the characteristics of that load, in the price received by the producer for our services, for the gas supplied to us. Those are really the two points in the application, and they are equally relevant, I submit, on an application before the Public Utilities Board.

MR. CHAMBERS: Mr. Chairman, what I have to say now is merely directed to the idea of probably saving some delay in the proceedings that are intimated may be brought before the Public Utilities Board. Now as I understand what Mr. Auxier has in mind, is an application to change the schedule of charges to be made by the Gas Company to his clients. Now it seems to me that that must necessarily involve two things, two main things. One is whether the Gas Company's earnings are sufficient to stand a reduction, but it also to my mind raises a matter which has never been threshed out in this Province by any tribunal, any Public Utility tribunal, that is the allocation of charges as between

the different classes of consumers. In other words, a question of due or undue discrimination. What I am suggesting is that every other consumer in this town, and in the other towns south of Calgary who are tied into this, are vitally interested in this application, and I am throwing out the suggestion now that if it is assumed that we are going to proceed on a short affidavit or short evidence or short hearing, that we are all under a misapprehension. I do suggest, and I am not doing it because I am curious or anything, that the information which the Board has gathered from the utility companies' books should be made available to the different classes of consumers. In the past the City has represented all consumers, but the situation is now developing where the different classes of consumers want to speak for themselves. I really raise this now with the idea of maybe saving time in the future. If we are going to have this delay during the summer, plans may be made now that may expedite the matter early in the Fall.

THE CHAIRMAN: Well at the moment I have no intention of precipitating the rate base, but it is possible Mr. Auxier's application may produce that very result.

MR. STEER: And to his cost.

MR. FENERTY: I have another suggestion, it might be helpful, and that is I want to know what we are going to have to prepare for. Quite frankly, I do not want to review a lot of stuff having to do with well head prices if it is going to turn out, as I submit it necessarily will have to turn out, and the Board holds it has any jurisdiction to even talk about the well head prices on the Utility Board Inquiry.

THE CHAIRMAN: Except to the extent that it affects

the company's financial position, what they have to pay for their material that they supply to the consumer.

MR. FENERTY: We are at once going to be met with the suggestion that well head price can form no part of the Inquiry before the Utility Board.

THE CHAIRMAN: That is as to how the well head price is arrived at.

MR. FENERTY: How it is arrived at or the amount of it any more than the 9 cent rate. I submit we are going to start with 9 cents and go on from there in the Utility Inquiry. I may be wrong, but I think that is a matter of jurisdiction. The other should be determined before we prepare questions of evidence.

THE CHAIRMAN: Well I am not trying to cross bridges until I come to them.

MR. AUXIER: Well, I might say this, I had been under the impression that in order to deal with the purchaser's price and the gate price, I would have to come before this Board. In any event Mr. Chambers the last time and Mr. Steer yesterday both intimated it is quite within the powers of the Public Utilities Board to say "Well that is only an average price, the price might well be below that to one consumer." The only way you can find out what that consumer should pay is going right back to the well and tracing the effect of his consumption on the services all the way down.

MR. STEER: You are not accusing me of ever having made any such proposition?

MR. AUXIER: You suggested that yesterday.

MR. STEER: No, I did not.

THE CHAIRMAN: Well, Gentlemen, I am not going to

cross bridges or make rulings on hypothetical somethings. When Mr. Auxier makes his application we will meet again and then the thing will develop and we will start to think about those things that must be thought of.

MR. AUXIER: Mr. Auxier, the Public Utilities application then, Sir, will be set over or should be set over until some time in the future?

MR. STEER: Not if it depends on any agreement of mine.

THE CHAIRMAN: Mr. Fenerty's position, which he has the right to take, has naturally produced a reaction from Mr. Steer, and he has withdrawn his offer to agree that any Order, if made, should be retroactive, and I think it is quite clear that I have no power to make a retroactive Order.

MR. FENERTY: I trust the Board understands that I was not rising to voice opposition to it being retroactive, but merely to point out that there might be other things involved.

MR. STEER: I am very much obliged to you.

MR. AUXIER: At the moment the Public Utilities application is under adjournment sine die?

THE CHAIRMAN: That is right.

MR. AUXIER: And I suppose I could discuss the matter with my clients and fix a date that is suitable, perhaps within the next three weeks, something like that?

THE CHAIRMAN: When are you leaving, Mr. Steer?

MR. STEER: I am sailing on the 11th of June, Sir.

THE CHAIRMAN: That means you have to leave here

about the 5th?

MR. STEER: Well if I fly it will be about the 6th. I may do that, of course.

MR.AUXIER: Perhaps we can discuss that and try and arrive at a date.

(At this point the Hearing adjourned).

IN THE MATTER OF THE NATURAL GAS UTILITIES ACT; and

IN THE MATTER OF an Application to the Board by The Consolidated Mining & Smelting Company of Canada Limited.

D E C I S I O N

Application to The Natural Gas Utilities Board by The Consolidated Mining & Smelting Company of Canada Limited, (hereinafter called "Consolidated"), in which that Company asks the Board to vary and review its decision dated 24th March, 1947, (delivered 9th April, 1947), and to fix prices for gas supplied to Consolidated and Canadian Western Natural Gas, Light, Heat & Power Company (hereinafter called "Canadian Western"), that are just and reasonable and do not unjustly discriminate against the Applicant:

(a) to be paid by Madison Natural, Gas Company Limited, (hereinafter called "Madison") to the producers thereof and to British American Gas Utilities Limited, and to Gas & Oil Refineries Limited:

and

(b) to be paid by Canadian Western to Madison.

The Applicant, while not agreeing with nor attacking the general fairness and reasonableness of the Board's decision, delivered as aforesaid, does suggest that by reason of:

(a) the value of the Applicant's plants to the City of Calgary;

(b) the interruptable nature of the supply of gas to the Applicant;

(c) the fact that it uses gas as a raw material in manufacturing processes;

(d) the fact that the Applicant uses in the said plants very large quantities of natural gas which would otherwise have to be re-pressured;

(e) the practically constant load factor of the Applicant's consumption of gas;

and

(f) The availability due to the location of the Applicant's plants, and the factors mentioned of an alternative supply of gas at a lower laid down cost;

is entitled to a "gate price" for natural gas supplied to its Calgary plants lower than the price of 9 cents per m.c.f. fixed by the Board's decision, reflecting not only a return to the producers below the Board's price of 3 cents per m.c.f. but also a similar, smaller charge for the service rendered in collecting and processing such gas and delivering it to the gate.

The Board hardly appreciates the reference to "plants". It may be that the Applicant has several distinct units, but they must come under the general heading of "plant".

Perhaps it should be explained that the expression "gate" means the point at which the Canadian Western takes delivery from Madison of the supply of natural gas which it uses throughout its complete distribution system, and is different from the outlet from Madison's scrubbing plant.

The historical background is that on 24th March, 1944, the Legislature enacted The Natural Gas Utilities Act, designed, as the Board understands it,

(a) to conserve natural gas in any gas field in the Province;

(b) to give a rateable share to all producers of natural gas in any gas market;

(c) to fix just and reasonable prices to be paid to producers of natural gas; and

(d) to fix a just and reasonable price for natural gas to be paid by public utility companies who distribute same to the ultimate consumer.

The foregoing is by no means exhaustive, but does reflect in a very broad general sense the remedial measures which the Board was called upon to institute.

Pursuant to the terms of this Statute, the Board commenced a Hearing in May, 1944, the first two weeks of which was devoted principally to a consideration of the engineering problems involved, in order that the Board could, as it ultimately did, issue orders directed to the owners of absorption plants requiring them to instal certain facilities so, as the Board understands it, to give effect to the purpose and intent of the Act. In March, 1945, the Board reconvened the Hearing and heard evidence respecting many of the specific directions contained in the Statute. The Hearing continued, with the usual unavoidable delays and adjournments, until the end of April 1946, - a Hearing lasting 81 days - at which time it was adjourned until 10th June, 1946, for argument by Counsel, and, except for the weekend period, argument continued until 21st June of that year. Because of the immense volume of evidence and the arithmetic calculations which were required, the Board issued to Counsel who had appeared (but not including the present Applicant, but of which the Applicant had knowledge) a draft of its decision in order that errors in arithmetic, if any, might be corrected. The decision, when finally issued, fixed a basic well head price of gas at 3 cents per m.c.f. The price of gas to those customers who purchased from Madison was fixed at 9 cents per m.c.f.

On 5th April, 1945, very early in the Hearing, evidence was given by Mr. J.R. Donald, a representative of The Department of Munitions and Supply, who stated that the Ammonia Plant located South of Calgary, and known as Alberta Nitrogen Products Limited, was planned early in 1940 forthe production of Ammonia and Ammonium Nitrate to meet United Kingdom, Canadian

and other war requirements. The plant, originally planned to have a capacity of 100 tons of ammonia per day, was expanded to a capacity of 230 tons and in addition had equipment for converting 75 tons per day to ammonium nitrate.

The plant was constructed close to Calgary because of the availability of natural gas, water, and suitable transportation, together with the general belief that such a plant would prove to be a valuable post-war industrial asset, although the latter may be wishful thinking. The construction, he said, involved $10,000.000.00, and represented the most recent advance in chemical engineering technique and was one of the finest plants on the Continent. Originally the plant was designed to supply ammonia and ammonium nitrate for explosives, but prior to the time that the witness gave evidence a large proportion of the output had been converted to nitrogen fertilizer to meet the world-wide shortage of that material. The gas consumption of the plant is about 9 million cubic feet of gas per day, but beyond that Mr.Donald, because of his Governmental, confidential position, was unable to give any details of the cost of operation. He did express the hope that the then price of gas, namely 7 cents per m.c.f., could be maintained. The current price to Canadian Western was $7\frac{3}{4}$ cents.

On April 4th, 1946, Mr. E. A. G. Colls, Manager of the Chemical and Fertilizer Division of Consolidated, gave evidence indicating inter alia the demand and the locale of demand for the Company's product, and the estimated gas consumption. In particular, he stressed:

(a) that because of the Company's demand the producers' market for the natural gas would

be increased;

(b) that without the Company's demand, the volume of gas to be re-pressured would equal that demand with a consequent increase in operating costs and perhaps increased costs to other consumers;

(c) the revenue to producers would be a discounted well head price for the volume of gas used by Consolidated if it were not taking its load and consequently would be re-pressured, as contrasted with the respective well head prices which would be received for the same volume as long as the Company's load continued.

However, he could not evaluate the whole effect of the Consolidated's load upon the summer volume to be re-pressured.

This submission was based upon the assumption that because certain facts existed the Applicant should be entitled to preferential rates and that if these facts did not exist, something else should be done.

He further stressed the following facts relative to his Company's position, as determined by figures for the year 1945:

(a) the number of employees, 367;

(b) A yearly payroll of $748,995.40;

(c) the cost of ntural gas $231,126.77;

(d) the cost of electric power $427,260.06; and

(e) freight bill $1,703,000.00.

It will be noted that, of all the costs listed, the cost of gas is the smallest.

The present application is largely based upon the quite important constant load factor of its gas consumption, and upon the fact that if that load did not exist, the quantum of the load must necessarily be re-pressured or returned to the formation at increased costs to the field utility company and consequently to the consumer.

At the opening of the Hearing, Counsel for Canadian Western submitted that the Board had no jurisdiction to entertain the application, and he relied upon the provisions of Section 41 of the Statute, which is in the following terms:

> "41. The Board may rehear an application before deciding it, and may review, rescind, change, alter or vary any decision or order made by it."

The Board derives its jurisdiction from the provisions of the Statute alone and it has no inherent jurisdiction other than that which arises by necessary implication. It will be noted that the two important words used in this section are "re-hear" and "review". Obviously the Board has power to re-hear an application before deciding it. In the present case the Board delivered its decision on 9th April, 1947, and so considers that it cannot re-hear it. The Board has also power to review, rescind, change, alter or vary any decision or Order made by it. Are the words "re-hear" and "review" synonymous? The Board does not think so, for it is manifestly impossible for any Board to rescind, change, alter or vary any decision arrived at on any application once the decision has been given. If a decision had not been given, the Board is of the opinion that it could hear further relevant evidence, and upon that

evidence, in addition to the evidence already heard, could render a decision, which would be in effect a re-hearing. A review, however, in the Board's opinion, is an entirely different thing and must be limited to reconsideration of that evidence which is already before it, and it is not until such a review has been had that the Board can rescind, change, alter, or vary its decision. The word "review" may have more than one meaning, but it must be construed according to the context in which it occurs, and in this case the context word "re-hear" precludes giving to the word "review" any meaning other than its ordinary meaning. Re-hearing must be treated as an appeal in which the Board may hear additional evidence before rendering a decision. Reference may be made to "Words and Phrases," 5th Series, Vol. 5 at page 150.

The Board agrees that, subject to the context of the Statute, "review" and "re-hear" might have the same meaning, but when the word "re-hear" is applied to a decision following upon application made to the Board before deciding the application, then obviously the word "review" must have a restricted meaning.

Counsel for Canadian Western further relied upon the provisions of Section 72(c), which is in the following terms:

> "72(c). the prices or prices to be paid for natural gas after it has been purified, scrubbed or otherwise treated for the extraction or removal therefrom of sulphuretted hydrogen or other deleterious substance including the price to be paid for such purified natural gas by a public utility purchasing the same for distribution to the ultimate consumer or otherwise;"

In the opening of the subsection, the words used are "price or prices", and relate to price or prices of natural gas, and then the continuing words of the section provide that the price or prices shall include the price to be paid for such natural gas by a proprietor of a public utility as defined by the Act or by the Public Utilities Act, purchasing the same for distribution to the ultimate consumer.

Canadian Western is undoubtedly a public utility as defined by The Public Utilities Act. Did the Legislature intend that the Board should fix many various prices to be paid by a public utility? If that was the Legislature's intention, it did not so express it. The words used refer only to a price to be charged to a public utility. If the present application should be granted, the result could mean a multiplicity of wholesale prices charged by Madison to Canadian Western. It is possible but improbable that circumstances might arise in which the Board might order Madison so sell gas to different types of customer at varying prices, but no such circumstances have been shown in this application.

It is said by the Applicant that the Board is to construe the Act according to the intent of the Legislature. That intent, however, can only be deduced from the language used. The price to be charged by Madison to a public utility is expressed in the singular and not in the plural.

The Applicant, however, says that Section 50 gives the Board wide discretionary powers in the fixing of the rate to be imposed by an proprietor, which, of course, inc u s Madison. The Board does possess these wide discretionary powers but they must necessarily be exercised subject to any

limitations expressed in the Statute. The Board considers that it has the power to fix one price to one public utility on cause shown, and still another price to another public utility if circumstances warrant, but it does not, in view of the language used in Section 72(c), consider that it can order Madison to charge multifarious and different prices to one single public utility. It seems to the Board that any variation in prices to the ultimate consumer do not lie within its jurisdiction.

Much of the evidence now proposed to be offered by the Applicant was given by Mr. Colls during the main Hearing, although there are now necessary variations which arise because of the rate bases established by the Board, the rate of return allowed, the allocation of costs and the well head price, and like matters. The only essentially new evidence to be offered relates to an alternative source of supply. The Applicant suggests that there is an alternative natural gas source of supply open to it, and that it should not be called upon to pay to Canadian Western a price greater than that at which it could secure that alternative. Even that source of supply may not be available to the Applicant because of the prohibition contained in Section 67 of the Statute, and the fixation of a well head price under any such proposed contract would be subject to the Board's jurisdiction since any well owner could claim and be entitled to a share of the market thereby established.

As a result the Board is of the opinion that it has no jurisdiction at the present time to hear further evidence. It cannot review a decision which has been rendered, and it can only review its decision on the basis of evidence

already before it. The proposed new evidence differs from that before it only in matters of detail. For these reasons the Board must dismiss the application with costs to all parties appearing, to be paid by Consolidated Mining & Smelting Company Limited, on Column 4, to be taxed, if necessary, by the Clerk of The Supreme Court at Calgary. The Applicant must pay the Board's costs, which are fixed at the sum of $110.00.

Counsel for the Applicant asked that he be permitted to amend his application in case the Board decided that it had no jurisdiction to hear the Motion as presented, by providing that Madison be directed to sell gas directly to the Applicant, and that Canadian Western be called upon to transport the gas through its lines to the Applicant's plant. The Board is not prepared to entertain such an application at the present time. This Application is obviously an attempt to evade the question of jurisdiction raised in this application, and should be the subject of a separate application of which all interested parties should have notice.

The Board is further of the opinion that since one or other of the parties to this application may desire to take an appeal against this decision, that it would be wrong to incur the costs of a hearing lasting several days which, in the end, might turn out to be completely abortive. If an appeal should be taken, and if the Board's decision should be reversed, a date can be fixed for the hearing of relevant evidence.

Several matters have occurred to the Board as having a bearing on the application in general although not with reference to the question of jurisdiction, and these are

matters which might very well be considered by the Applicant. It is true that they have a high load factor, and it is also true that it is the largest consumer of natural gas on the Canadian Western distribution system. There are, however, other customers on that system which also have a high load factor. If the present application should be granted, then every person with a high load factor would have a right to make a similar application to the Board, and indeed, if the principle advocated by the company should be carried to its final conclusion, the owner of a very large house could very well say that he was entitled to a better domestic rate than the owner of a very small house. In other words, high load factor is indeed a relative term. If effect is given to a principle such as that, it is perfectly obvious that hopeless confusion would result, and in general and without attempting to decide the point and merely for the consideration of these facts by the Applicant, it would seem that the apportionment of retail prices lies within the scope of the Public Utilities Board and not of this Board.

Furthermore, if effect should be given to the principles advocated by the Applicant then if they are to be allowed a wholesale price less than the 9 cents per m.c.f. then either the other consumers of Canadian Western must pay a greater price for gas or the price to the producers of natural gas must be reduced. The intermediate costs must be borne by all consumers, whether domestic, commercial or industrial. The Board is of the opinion that the price to the producers at the present time is at the irreducible minimum and, on the other hand, the ordinary consumers of

Calgary, whether commercial or domestic, should not be called upon to subsidize any consumer. That, in effect, is what the Applicant asks, and it may be that in a proper application to the Board having jurisdiction, that some relief might be given. This Board does not have that jurisdiction.

DATED at the City of Calgary, in the Province of Alberta, this 20th day of May, A.D. 1947.

THE NATURAL GAS UTILITIES BOARD

"G. M. BLACKSTOCK"

Chairman.